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IN THE

Supreme Court of the United States

October Term, 1942.

No. 804. 37

CAFETERIA EMPLOYEES UNION, LOCAL 302 and WILLIAM MESEVICH,

Petitioners,

AGAINST

ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES,

Brief in Opposition to Petition for Writ of Certiorari.

ABRAHAM MICHAEL KATZ,
Of Counsel for Respondents.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*, AGAINST ELIAS TSAKIRES, KALLIS CONSTANTINON, CHRIST LYMBOURIS, ANGELO CONSTANTINE, NICHOLAS RUSSOS, STELLA BELLAS, MARY YORWICK, JAMES LOIZIDES, and LOUIS LOIZIDES.	No. 904.

Brief in Opposition to Petition for Writ of Certiorari.

POINT I.

The case involves nothing in connection with rights guaranteed by the Federal Constitution.

The Court of Appeals of New York State has affirmed the Appellate Division of the Supreme Court of New York State, which affirmed a judgment for the respondents, granted by Special Term. By said judgment, the Union has been enjoined from picketing the respondents' restaurant in the Borough of Bronx, New York City.

The business is conducted by the respondents, without any outside help whatever. They are all partners. It

has so been found by the Special Term, and the Appellate Division made no new findings of fact. The Court of Appeals was therefore bound by those findings.

There was no question involved here of the slightest dissatisfaction with condition of labor, wages or hours, or with anything at all. This union took it upon itself, as a sort of tutelary angel, to picket these respondents' restaurant, carrying signs telling the public that the respondents were unfair to organized labor. Obviously this was untrue, because no one was employed by the respondents. In fact, a union is composed of employees and not of owners, and it is difficult to see what object the union had in picketing these respondents, except to harass them. As was aptly said by Hon. Peter P. Smith, Justice, in *Zweibon* v. *Goldberg, et al.* (20 N. Y. Supp. 2nd, 272, 273) (not officially reported):

> "'The picketing which is being resorted to in this case must be restrained because the signs are untruthful, deceptive and misleading. The reading on the placards being carried by pickets is as follows, 'Please do not patronize this place, carpets and linoleum being done by non-union labor.' The plain meaning sought to be conveyed to the public by the legends on the signs is that plaintiff, in the conduct of his business, employs persons who are not members of any union of employees. The truth is, however, that plaintiff employs no one at all; he employs no labor, either non-union or union. He himself does all the work in connection with his business; he conducts a 'one-man business.' Under such circumstances, there can be no 'labor dispute' as that term is commonly understood. Civil Practice Act, §876-a, subdivision 10 (c). The obvious purpose of the picketing in which defendants are engaged is to create in the minds of the public

> the false impression that plaintiff is employing non-union labor. Such picketing is a libel upon plaintiff and where there is no labor dispute it must be enjoined. *Thompson* v. *Bockhout*, 273 N. Y. 390, 7 N. E. 2nd 674; *Baillis, et al.* v. *Fuchs, etc.*, 2nd Dept., 258 App. Div. 919, 16 N. Y. Supp. 2nd 724."

Our Constitution does not give one, under the guise of the guarantee of freedom of speech, the right and freedom to misrepresent and libel people in business, who choose to run it without outside help. This is a small business, each partner doing his bit to eke out a livelihood, and to contribute to the welfare of the partnership. Picketing in a case of this kind can have as its aim only the ruination of a small business, without any gain either to the public, labor or the union. Surely the object of such picketing cannot be to have the owners join the union.

As was stated in *National Labor Relations Board* v. *Eansteel M. Corp.*, 306 U. S. 240, 59 S. Ct. 490, 497, 83 L. Ed. .... "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." Of course, force can be actual, or of the more dangerous kind, the subtle force of false propaganda.

It is respectfully submitted that under no reasoning whatever can it be seen why a union may picket a small business that employs no one. No rights of labor are involved. No public policy demands it. No constitutional questions are involved. It can only serve to encourage strikes and hamper the war effort.

CONCLUSION.

Since there are no constitutional questions involved, and no public policy of the land involved, the petition for a writ of certiorari should be denied.

Dated: New York, May 1, 1943.

Respectfully submitted,

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